



Conservation
Law Foundation

For a thriving New England

CLF Massachusetts 62 Summer Street
Boston, MA 02110
P: 617.350.0990
F: 617.350.4030
www.clf.org

June 18, 2026

James F. Kane
President & CEO, A.D. Makepeace Company
President & CEO, ADM Management Corporation
158 Tihonet Road
Wareham, MA 02571

Daniel Gorczyca
VP & Project Executive, ADM Agawam Development LLC
158 Tihonet Road
Wareham, MA 02571

Michael McVeigh
Registered Agent, A.D. Makepeace Company
Registered Agent, ADM Agawam Development LLC
Registered Agent, ADM Management Corporation
Registered Agent, Read Custom Soils LLC
158 Tihonet Road
Wareham, MA 02571

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation, Inc. (“CLF”) hereby gives notice to A.D. Makepeace Company, ADM Agawam Development LLC, ADM Management Corporation, and Read Custom Soils LLC (collectively, "A.D. Makepeace") and its agents and directors of its intent to file suit pursuant to Section 505 of the Clean Water Act (the “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This Notice of Intent to Sue (“Notice Letter”) constitutes notice pursuant to 40 C.F.R., Part 135 to the addressed persons of CLF’s intention to file suit in the United States District Court for the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice Letter.

The subject of this action is A.D. Makepeace’s failure to comply with the Section 404 of the Act, 33 U.S.C. § 1344, at four cranberry bog sites in Carver and Plymouth, Massachusetts. At all four sites, A.D. Makepeace has discharged dredged or fill material into navigable waters without

authorization from any permit as required by Section 404, resulting in the unauthorized alteration of those waters, including jurisdictional wetlands and perennial streams.

PERSONS GIVING NOTICE

CLF is a non-profit, 501(c)(3) organization dedicated to the protection and conservation of New England's environment, including New England's waters and their uses and benefits. CLF's members' interests are adversely affected by A.D. Makepeace's violations.

LOCATIONS OF THE ALLEGED VIOLATIONS

The violations alleged in this Notice Letter have occurred and continue to occur at the following A.D. Makepeace locations (collectively, the "Sites"):

1. 24 Federal Road/ 0 Golden Pond Road, Carver ("Smith-Hammond Bogs");
2. 46 Federal Road, Carver ("Wankinko¹ Bogs");
3. Wareham Road, Plymouth ("White Island Bogs"); and
4. 0 Wihonet (Off East Head Wihonet and Tihonet Road), Plymouth ("Canning Bogs").

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

A.D. Makepeace Company, ADM Agawam Development LLC, ADM Management Corporation, and Read Custom Soils LLC are "person[s]" within the meaning of Section 505(a) of the CWA.²

A.D. Makepeace Company and ADM Agawam Development LLC own the Sites where the violations are occurring and continue to occur and that are the subject of this Notice Letter and have owned the locations at all relevant times. A.D. Makepeace Company owns the Smith-Hammond, Wankinko, and Canning Bogs Sites, and has owned the Sites at all relevant times. ADM Agawam Development Company owns the White Island Bogs Site and has owned the Site at all relevant times. ADM Management Corporation operates the Site.

Read Custom Soils LLC is a subsidiary of A.D. Makepeace Company and mines, excavates, extracts, and dredges the sand, gravel, and earth materials that comprise the dredged or fill materials that are discharged without a permit. Upon information and belief, Read Custom Soils LLC discharges dredged and fill material into waters of the United States at the Sites.

BACKGROUND

In order to excavate and extract sand and gravel, A.D. Makepeace conducted commercial strip-mining at the Sites. This strip-mining involved clearing forests and land of trees and vegetation, leveling hills, removing topsoil, and removing layers of sand and gravel. A.D. Makepeace also dredged underlying aquifers for earth materials. A.D. Makepeace discharged tons of sand, gravel, and dredged material into navigable waters at the Sites, permanently filling acres of

¹ Also known as "Wankinko Bogs." CLF uses "Wankinko" in recognition of the wetlands' historical and present-day significance to Indigenous communities and Tribal Nations.

² 33 U.S.C. § 1362(5) (defining "person" as an individual, corporation, commission, among others).

wetlands and filling or altering perennial streams. The partial or complete filling of wetlands and streams poses serious risks to the environment and to the safety of surrounding communities.

A. A.D. Makepeace Discharges Pollutants into Waters of the United States.

The Clean Water Act prohibits any person from discharging any pollutant from a point source to waters of the United States unless in compliance with another provision of the Act, such as authorization under Section 404.³

A discharge of a pollutant is “any addition of any pollutant to navigable waters from any point source.”⁴ A point source is “any discernible, confined, and discrete conveyance...from which pollutants are or may be discharged.”⁵ Materials such as “dredged soil,” “biological material,” “rock, sand,” and “industrial, municipal, and agricultural waste,” constitute pollutants under the Act.⁶ A.D. Makepeace discharges pollutants from point sources when it discharges

Wetlands are “navigable waters” or “waters of the United States” under the Act when they have a “continuous surface connection to bodies that are ‘waters of the United States’ in their own right, so that there is no clear demarcation between ‘waters’ and ‘wetlands.’”⁷ Wetlands include swamps, marshes, bogs, and similar areas.⁸ Impoundments of water and tributaries that are “relatively permanent, standing or continuously flowing bodies of water” are considered waters of the United States in their own right.⁹ Each of the Sites are waters of the United States.¹⁰

B. A.D. Makepeace’s Operations Require Them to Obtain a Permit Under Section 404 of the Act.

Under Section 404 of the Act, A.D. Makepeace may not discharge dredged or fill material into waters of the United States except in accordance with a permit issued by the U.S. Army Corps of Engineers (“USACE”) or an exemption under USACE regulations.¹¹

³ 33 U.S.C. § 1311(a).

⁴ 33 U.S.C. § 1362(12).

⁵ 33 U.S.C. § 1362(14).

⁶ 33 U.S.C. § 1362(6).

⁷ See *Sacket v. EPA*, 598 U.S. 651, 678 (2023) (citing *Rapanos v. U.S.*, 547 U.S. 715, 742, 755 (2006)) (providing WOTUS definition accepted by EPA); *Definition of “Waters of the United States”*: *Rule Status and Litigation Update*, ENV’T PROT. AGENCY, [<https://perma.cc/5JQQ-8GKG>] (last visited June 18, 2026); see also 40 C.F.R. § 120.2(a).

⁸ 40 C.F.R. § 120.2(c)(1) (defining wetlands as “areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions”).

⁹ 40 C.F.R. §§ 120.2(a)(2)-(3), (5).

¹⁰ The location-specific WOTUS determinations below are based on research prepared by wetland experts, Brandon Faneuf, Professional Wetland Scientist (“PWS”) of Ecosystem Solutions (“ESI”), and Patrick Garner, President of Patrick C. Garner Co. Inc., a firm that specializes in wetland science.

¹¹ 33 U.S.C. § 1344(f)(2) (prohibiting discharge of dredged or fill material without a permit); see 33 U.S.C. § 1311(a) (providing prohibitions on discharges and exceptions); 33 C.F.R. § 323.4; 33 U.S.C. § 1344(f)(1); 40 C.F.R. § 232.3 (EPA regulations); 33 C.F.R. Part 330 (Nationwide Permit Program).

“Dredged material” is any “material that is excavated or dredged” from waters of the United States.¹² A discharge of dredged material occurs when dredged material is added or redeposited into waters of the United States.¹³

“Fill material” is any material, excluding garbage, that, when placed into waters of the United States, “has the effect of replacing any portion of a [water of the United States] with dry land; or changing the bottom elevation of any portion of a [water of the United States].”¹⁴ A discharge of fill material is “the addition of fill material” into waters of the United States.¹⁵

A.D. Makepeace must obtain an individual permit from USACE, or obtain coverage under a Regional General Permit or Nationwide General Permit, in order to discharge fill or dredged materials into waters of the United States at its Sites. To obtain a permit under Section 404, A.D. Makepeace must demonstrate that (1) no practicable alternative exists that is less damaging to the aquatic environment, or (2) the nation's waters would not be significantly degraded.¹⁶ The Act requires A.D. Makepeace to take steps to avoid impacts to wetlands, streams, and aquatic resources, show that potential impacts have been minimized, and provide compensation for all remaining unavoidable impacts.¹⁷

ACTIVITIES ALLEGED TO BE VIOLATIONS

At all of the Sites, A.D. Makepeace unlawfully discharged dredged or fill material from a point source into waters of the United States without a Section 404 permit.

A.D. Makepeace conducted commercial sand and gravel mining at its Sites and subsequently discharged fill materials into waters of the United States at each Site. The discharge of dredged and fill materials into the wetlands permanently and drastically altered the shape and topography of the wetlands and impacted hundreds of linear feet of perennial streams.

For example, samples taken in 2025 at the Canning Bogs Site show the presence of human transported material with an odor of biosolids. Aerial images from the Canning Bogs show what appears to be stumps and debris associated with land clearing discharged into the waters. Upon information and belief, the same materials associated with land clearing has been discharged at the White Islands Bogs, Wankinko Bogs, and Smith-Hammond Bogs Sites. The materials that A.D. Makepeace discharged are pollutants under the Act.¹⁸

¹² 33 C.F.R. § 323.2(c).

¹³ 33 C.F.R. § 323.2(d)(1).

¹⁴ 33 C.F.R. § 323.2(e).

¹⁵ 33 C.F.R. § 323.2(f).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 33 U.S.C. § 1362(14)

A.D. Makepeace uses excavators, bulldozers, front-end loaders, and other machinery¹⁹ to move the dredged and fill materials from its mining and discharge them into the wetlands and perennial streams at the Sites via pushing, grading, and dumping. Aerial images show the use of this equipment at three of the four Sites. Upon information and belief, this equipment was used for dredging and filling at the fourth Site, the Wankinko Bogs, based on the size and scale of the impact.

A.D. Makepeace used the deposited materials to permanently alter the shape and topography of the wetlands and stop the flow of perennial streams, which constitute waters of the United States.

A. A.D. Makepeace’s Operations at the Smith-Hammond Bogs Site Violate Section 404 of the Clean Water Act.

The Smith-Hammond Bogs Site is on a portion of a 336.5-acre parcel identified by the Town of Carver Assessor as Map 131 Lot 1-3R. The violations are within a 42 square mile Agawam River/Frontal Buzzards Bay subwatershed and within a perennial stream that leads to tidal waters as determined by USGS maps and a river thread created via the USGS StreamStats application. The perennial stream flows to the Wareham River and Buzzards Bay. These waters are all waters of the United States.

A.D. Makepeace altered and filled approximately 58.5 acres of wetlands at the Smith-Hammond Bogs Site, including the complete filling of approximately 6.3 acres which were turned into upland areas, and partial filling of additional areas. A.D. Makepeace’s discharge of dredged and fill materials also altered approximately 575 linear feet of perennial stream at the Site.

Upon information and belief, A.D. Makepeace did not obtain an individual permit from USACE to discharge dredged or fill materials into waters of the United States at the Smith-Hammond Bogs Site, nor did it obtain coverage under a general permit.

B. A.D. Makepeace’s Operations at the Wankinko Bogs Site Violates Section 404 of the Act.

The Wankinko Bogs Site is within an approximately 538-acre parcel identified by the Town of Carver Assessor as Map 131, Lot 2-4. The wetlands at the Site included a perennial stream that connected to the Wankinco River. The Wankinco River flows through Tihonet Pond and into the Wareham River. These waters constitute waters of the United States.

A.D. Makepeace engaged in commercial sand and gravel mining at the Wankinko Bogs Site since 2011. In doing so, it has strip-mined or plans to strip-mine approximately 60 acres of wetlands. Between June 2012 and May 2015, A.D. Makepeace filled the perennial stream, permanently eliminating it. The discharged dredged or fill material remains in place. A.D.

¹⁹ Excavators, bulldozers, and front-end loaders are all types of heavy machinery that are discernible, confined mechanisms to discharge on a large scale, which meets the definition of a point source under 33 U.S.C. § 1362(14). *See Avoyelles Sportsmen’s League, Inc. v. Marsh*, 715 F.2d 897, 922 (5th Cir. 1983) (“bulldozers and backhoes were ‘point sources,’ since they collected . . . material that may ultimately have found its way back into the waters.”).

Makepeace also entirely filled portions of the wetlands in order to build trucking roads to facilitate its mining operations.

Upon information and belief, A.D. Makepeace did not obtain an individual permit from USACE to discharge dredged or fill materials into waters of the United States at the Wankinko Bogs Site, nor did it obtain coverage under a general permit.

C. A.D. Makepeace's Operations at the White Islands Bogs Site Violates Section 404 of the Act.

The White Island Bogs Site is within a parcel of land identified by the Town of Plymouth Assessor as Map 115-000-000A-049 with a street address of 2 River Run Way. The wetlands were formerly connected to a perennial river and stream that flowed into Red Brook and to Buzzards Bay. The Site is within the Red-Brook Cape Cod Canal subwatershed.

A.D. Makepeace discharged dredged or fill material into about 560 linear feet of perennial river and stream, and 20.5 acres of associated wetlands between 2018 and May 2023. The dredged or fill material remains in place.

Upon information and belief, A.D. Makepeace did not obtain an individual permit from USACE to discharge dredged or fill materials into waters of the United States at the White Island Bogs Site, nor did it obtain coverage under a general permit.

D. A.D. Makepeace's Operations at the Canning Bogs Site Violates Section 404 of the Act.

The Canning Bogs Site is within a parcel of land identified by the Town of Plymouth Assessor as Map/Lot 126-000-007-003. The Site formerly contained a perennial stream that flowed through the Bogs and into the Wankinco River. The wetlands were also connected to the Wareham River and Buzzards Bay. The wetlands, perennial stream, and rivers are all waters of the United States

A.D. Makepeace discharged dredged or fill material into perennial streams and wetlands at the Site. A.D. Makepeace altered streams by dredging and filling them. A.D. Makepeace dammed the Wankinco River by installing flume/weir devices. A.D. Makepeace also dredged, filled, and altered associated wetlands connected to the Wareham River and Buzzards Bay between May 2015 and January 2021.

Upon information and belief, A.D. Makepeace did not obtain an individual permit from USACE to discharge dredged or fill materials into waters of the United States at the Canning Bogs Site, nor did it obtain coverage under a general permit.

DATES OF THE VIOLATIONS

Each day that A.D. Makepeace discharges dredged or fill material without a permit and each day that the material remains in place constitutes a separate and distinct violation of Sections 301(a) and 404(f)(2) of the CWA.²⁰

A.D. Makepeace has not been in compliance at any of the Sites since at least June 2012. A.D. Makepeace illegally discharged fill or dredged material at: (1) Smith-Hammond Bogs between 2018 and 2026; (2) Wankinko Bogs between June 2012 and May 2015; (3) Canning Bogs between May 2015 and January 2021; and (4) White Island Bogs between 2018 and May 2023. The fill materials remain in place at all of the Sites. A.D. Makepeace’s violations of Sections 301(a) and 404(f)(2) of the Act are ongoing and continuous, and barring an order to restore the Sites to their original condition, these violations will continue indefinitely.

The allegations in this Notice Letter are based on documents obtained by CLF through publicly available information. If CLF obtains evidence of additional violations of the Act at the Sites, including violations which take place after the date of this Notice Letter, CLF will incorporate those violations into its Complaint. CLF hereby provides notice to A.D. Makepeace of all violations of the Act.

RELIEF REQUESTED

A.D. Makepeace is liable for the above-described violations. Each separate violation of the Act subjects the violator to a penalty of up to \$68,445.00 per day per violation for all violations occurring after November 2, 2015, where penalties are assessed on or after January 8, 2025 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. § 1319(d) and 40 C.F.R. §§ 19.1–19.4. CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek appropriate declaratory and injunctive relief to prevent further violations of the Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring A.D. Makepeace to correct all identified violations and demonstrate full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Heather Govern by July 8, 2026, so that negotiations may be completed before the end of the 60-day notice period. We do not intend to

²⁰ See *United States v. Cumberland Farms, Inc.*, 647 F. Supp. 1166, 1183 (D. Mass. 1986) (“A day of violation constitutes not only a day in which [Defendant] was actually using a bulldozer or backhoe in the wetland area, but also every day [Defendant] allowed illegal fill material to remain therein”).

delay the filing of a complaint in federal court if discussions are continuing at the conclusion of 60 days.

Sincerely,

/s/ Phoebe K. DeMeerleer
Phoebe K. DeMeerleer, Esq.
Conservation Law Foundation
235 Promenade Street, Ste. 560
Providence, RI 02908
(401) 228-1908
pdemeerleer@clf.org

Heather A. Govern, Esq., MA Bar No. 688482
Conservation Law Foundation
62 Summer Street
Boston, MA 02110
(617) 850-1765
hgovern@clf.org

cc:

Lee Zeldin, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460

Mark A. Sanborn, Regional Administrator
U.S. Environmental Protection Agency Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

Bonnie Heiple, Commissioner
Massachusetts Department of Environmental Protection
100 Cambridge Street, Suite 900
Boston, MA 02114

Citizen Suit Coordinator
Environment and Natural Resources Division Law and Policy Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530